

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
 : Docket #23cr0004  
UNITED STATES OF AMERICA, :  
 :  
Plaintiff, :  
 :  
- against - :  
 :  
MARTIN HANDLER, et al., : January 11, 2023  
 : New York, New York  
Defendants. :  
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PROCEEDINGS BEFORE  
THE HONORABLE ROBERT W. LEHRBURGER,  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: UNITED STATES ATTORNEY'S OFFICE  
BY: DANIEL WOLF, ESQ.  
MARY ELIZABETH BRACEWELL, ESQ.  
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For Defendant - NECHELES LAW LLP  
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For Defendant - STEVEN YUROWITZ, ESQ.  
Menachem Lieberman:

For Defendant - SHER TREMONTE  
Isidore Handler: BY: JUSTINE HARRIS, ESQ.  
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APPEARANCES (CONTINUED):

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None

E X H I B I T S

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Court

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THE CLERK: We're here in the matter for initial presentment, 23cr4, US versus Martin Handler, US versus Menachem Lieberman, US versus Isidore Handler, and US versus Ben Werczberger. Attorneys, please state your name for the record starting with the government.

MR. DANIEL WOLF: Yes, good afternoon, Your Honor, Daniel Wolf on behalf of the government. I'm joined by AUSA Molly Bracewell.

MS. MARY BRACEWELL: Good afternoon.

MR. GEDALIA STERN: Good afternoon, Your Honor, Gedalia Stern, G-E-D-A-L-I-A, on behalf of Martin Handler.

MR. STEVEN YUROWITZ: Good afternoon, Your Honor, Steven Yurowitz on behalf of Menachem Lieberman.

MS. JUSTINE HARRIS: Good afternoon, Your Honor, Justine Harris, Sher Tremonte, for Isidore Handler.

MR. JASON SER: Good afternoon, Your Honor, Jason Ser, last name is spelled S-E-R, Meister Seelig & Fein, on behalf of Mr. Werczberger.

HONORABLE ROBERT W. LEHRBURGER (THE COURT): All right, welcome, all, please be seated.

1  
2 DEFENSE ATTORNEY: There are no chairs, Your  
3 Honor.

4 THE COURT: I am sorry. All right, the first  
5 thing I need to do is ask the government the date and  
6 time of arrest, please.

7 MR. WOLF: Yes, all four defendants were  
8 arrested today, January 11, 2023. Mr. Handler was -- Mr.  
9 Martin Handler was arrested at approximately 5:32 a.m., Mr.  
10 Isidore Handler was arrested at approximately 5:58 a.m., Mr.  
11 Lieberman was arrested at approximately 5:34 a.m., and Mr.  
12 Werczberger was arrested at approximately 6:05 a.m.

13 THE COURT: There are four defendants (inaudible)  
14 four sets of papers so just bear with me.

15 (PAUSE IN PROCEEDING)

16 THE COURT: All right, sorry about that. So the  
17 reason we are here is because each of you has been charged  
18 with certain criminal conduct pursuant to an indictment. I  
19 am going to explain to you certain rights that you have,  
20 make sure that you have counsel, which it appears you do,  
21 determine if there are conditions upon which you should be  
22 released pending further proceedings, and also make sure  
23 you've been advised of the charges against you.

24 Let me begin with some of your rights. You have  
25 the right to remain silent. You need not make any

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statements to authorities. Even if you have already made statements to authorities, you need not make further statements to them. If you do make such statements they can be used against you. I'm just going to ask counsel right here to just move over a little this way so that I can all defendants.

DEFENSE ATTORNEY: I apologize.

THE COURT: That's all right, you're just blocking --

DEFENSE ATTORNEY: I'll just stand over here.

THE COURT: Either way, that's fine, thank you.

All right, you have the right to be released pending further proceedings either on conditions or without conditions, unless I determine there are no set of conditions that can reasonably assure the safety of the community or your presence at future proceedings.

If you are not a US citizen you have the right to request that a government attorney or law enforcement official notify a consular officer from your country of origin that you've been arrested. In some cases a treaty or other agreement requires that this be done anyway.

You have the right to be represented by an attorney at all proceedings including this one. You have the right to hire your own attorney but if you cannot afford

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one at any time the Court will appoint one for you.

Do you understand your rights as I've explained them so far? And was it Mr. Martin Handler up front here?

MR. MARTIN HANDLER: Yes.

THE COURT: All right, and then Mr. Lieberman?

MR. MENACHEM LIEBERMAN: Yes.

THE COURT: And then Mr. Isidore Handler?

MR. ISIDORE HANDLER: Yes.

THE COURT: And Mr. Ben Werczberger?

MR. BEN WERCZBERGER: Yes.

THE COURT: All right, good, so you all understand. I also see that you have counsel standing next to you and I just want to confirm whether they are retained counsel. Counsel for Mr. Martin Handler?

MR. STERN: I'm retained, Your Honor.

THE COURT: And for Mr. Menachem Lieberman?

MR. YUROWITZ: Yes, Your Honor.

THE COURT: And for Mr. Isidore Handler?

MS. HARRIS: Yes, Your Honor.

THE COURT: And for Mr. Ben Werczberger?

MR. SER: Yes, Your Honor.

THE COURT: All right, so each defendant has an attorney. Now as I said, this has been -- as I said, you've been charged with certain offenses

pursuant to an indictment and that indictment charges generally that you have committed schemes to commit government funded daycares in New York City and to steal millions of dollars intended for low income families and that particularly Mr. Martin Handler and Menachem Lieberman at various times secretly owned and embezzled funds from a nonprofit daycare provider and together with Mr. Harold Schwartz, Isidore Handler and Mr. Werczberger, stole from and defrauded the City of New York's Administration for Children's Services and the US Department of Health and Human Services. There are seven counts I believe in the indictment, not all of them are against all of the same defendants.

I'm going to ask counsel now have you received a copy of the indictment, have you reviewed it with your client, and does he waive a public reading, for Mr. Martin Handler?

MR. STERN: We've received the indictment, I've reviewed it with my client and he does waive a public reading.

THE COURT: And for Mr. Lieberman?

MR. YUROWITZ: Yes, Your Honor, the same.

THE COURT: For Mr. Isidore Handler?

MS. HARRIS: Yes, we waive a public reading,



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we've reviewed it with our client.

THE COURT: All right, and for Mr.  
Werczberger?

MR. SER: Yes, Your Honor, I've reviewed the  
indictment with my client, he understands it and he  
will waive its public reading.

THE COURT: All right. And let me ask  
government counsel, has the District Judge set a date  
for a first appearance?

MR. WOLF: Your Honor, the District Judge has  
not, this matter has been referred for presentment but  
not arraignment, and we would respectfully request  
that the Court set a control date of two weeks out  
from today which I think would be January 25<sup>th</sup>.

THE COURT: All right, that will be so  
ordered, control date set for January 25<sup>th</sup>.

DEFENSE ATTORNEY: Your Honor, if I could just  
ask because I've got travel plans on that date, I  
don't know if that's going to be an appearance date  
but I, I'm going to be out of town.

THE COURT: It's really a control date and the  
purpose of which should allow counsel to confer with  
each other and to confer with Judge Rearden's chambers  
to select a date that works for everyone. I understand

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that's how it will be handled, is that correct, may I ask the government?

MR. WOLF: Yes, that is correct. We've been in touch with chambers and chambers has said that they will be reaching back out with a specific date.

THE COURT: All right, thank you. All right, so that brings us to the question of detention or release. It appears that the parties have each agreed, each of the defendants have agreed with the government on a set of proposed terms for their release pending further proceedings, is that correct?

MR. WOLF: That is correct, we have agreed with each set of defendants on a set of conditions for release for the Court's consideration.

THE COURT: All right. And we're going to go through each of those for each defendant, so let's start with Mr. Martin Handler, I'll ask government counsel to recite the proposed terms and then I'll ask defense counsel for confirmation that they agree to those terms.

MR. WOLF: Yes, the terms are as follows, a \$1 million bond to be cosigned by two financially responsible persons and to be secured by real property, specifically Mr. Martin Handler's personal residence. Travel is to be restricted to the Southern District of New York, Eastern

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District of New York, District of New Jersey and Southern District of Florida. Surrender of all travel documents and no new applications --

THE COURT: Excuse me, I'm violating my own rules by having my phone ring, that's what you are hearing. I'm trying to turn it off but I am dealing with a medical emergency or sorts and that's I had it on, just bear with me. All right, it has completed, go ahead.

MR. WOLF: I believe where I stopped was surrender of travel documents and no new applications.

THE COURT: Yes.

MR. WOLF: Pretrial supervision as directed. The defendant is to continue or seek employment. The defendant is to have no contact with co-defendants outside the presence of counsel except that the defendants may have non-substantive communications about the case with Isidore Handler and Ben Werczberger outside the presence of counsel.

Finally, the defendant is to withdraw as a signatory on all New York City Early Learning Company bank accounts with the defendant to furnish proof of such withdrawal to the government by January 20, 2023. And thereafter, defense counsel to identify for the government

every 60 days any transfers of New York City Early Learning Company funds to Martin Handler or companies or entities in which Martin Handler has an ownership interest. The defendant is to be released on his own signature and to have until January 20, 2023, to meet the conditions relating to cosigners.

THE COURT: All right, and are those the terms for Mr. Martin Handler?

MR. STERN: Yes, Your Honor.

THE COURT: All right, those terms seem appropriate to the Court to reasonably assure the safety of the community and the presence of the defendant at future proceedings, so I will impose those. I am going to ask counsel after the official part of this proceeding just for some of the details so that I can get those down properly.

All right, let's go on to Mr. Lieberman, I believe, and why don't you tell me what provisions you are proposing for him.

MR. WOLF: Yes, for Mr. Lieberman, the parties are proposing for the Court's consideration a bond in the amount of a million dollars to be secured by signatures of two financially responsible persons, as well as real property in the form of Mr. Lieberman's

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2 personal residence. Travel is to be restricted to the  
3 Southern District of New York, Eastern District of New  
4 York and District of New Jersey. The defendant is to  
5 surrender all travel documents and make no new  
6 applications. In addition, on that condition I will  
7 add the defendant's wife and his four minor children  
8 are to surrender all travel documents and make no new  
9 applications by January 13, 2023.

10           The defendant is directed to be -- is subject  
11 to Pretrial supervision as directed by Pretrial  
12 Services. In addition, the defendant is to have no  
13 contact with co-defendants outside the presence of  
14 counsel. The defendant is to continue employment or  
15 seek employment. And then, finally, the defendant is  
16 to withdraw as a signatory on all Simche Kinder bank  
17 accounts with the defendant to furnish proof of such  
18 withdrawal to the government by January 20, 2023, and  
19 thereafter, defense counsel to identify for the  
20 government every 60 days any transfers of Simche  
21 Kinder funds to Menachem Lieberman or companies or  
22 entities in which Menachem Lieberman has an ownership  
23 interest.

24           THE COURT: All right, defense counsel, are  
25 those the terms agreed to?

MR. YUROWITZ: Yes, Your Honor.

THE COURT: All right, those terms again seem appropriate to the Court and I determine that they do reasonably assure the safety of the community and the presence of the defendant at future proceedings, so those terms will be imposed.

Okay, and let's move on to Mr. Isidore Handler.

MR. WOLF: Yes, Your Honor, the defendant is to be issued a \$250,000 bond to be cosigned by three financially responsible persons. Travel is to be restricted to the Southern District of New York, Eastern District of New York and District of New Jersey. The defendant is surrender all travel documents and make no new applications. Pretrial supervision is to be as directed by Pretrial Services. The defendant is to seek and maintain employment. The defendant is to have no contact with co-defendants outside the presence of counsel except with respect to Martin Handler with whom he is not to have any substantive communications about the case outside the presence of counsel.

THE COURT: All right, defense counsel, are those the terms as you understand them and do you

1  
2 agree?

3 MS. HARRIS: They are, Your Honor, and we  
4 agree.

5 THE COURT: All right, again, those seem  
6 appropriate and sufficient to reasonably assure the  
7 presence of the defendant at future proceedings and  
8 the safety of the community so I am imposing those  
9 terms on Mr. Isidore Handler. And I just want to  
10 check one thing, with respect to his release, it will  
11 be on his own signature?

12 MR. WOLF: Yes, Your Honor, and I may have  
13 forgotten to mention that for Mr. Lieberman, as well,  
14 that will be on his own signature.

15 THE COURT: All right, and with terms to be  
16 met by the same as Mr. Martin Handler?

17 MR. WOLF: That's correct. So for Mr.  
18 Lieberman and Mr. Martin Handler, with respect to the  
19 bank, bank account issues, I believe that proof of  
20 withdrawal is to be made by January 20, 2023, in  
21 addition, that's the same date for financially  
22 responsible persons to be approved as well as for the  
23 bond to be secured by property.

24 THE COURT: All right, thank you. And,  
25 finally, for Mr. Werczberger what do we have?

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2 MR. WOLF: Yes, Your Honor, a \$1 million bond  
3 to be cosigned by three financially responsible  
4 persons and to be secured by real property,  
5 specifically his personal residence. Travel is to be  
6 restricted to the Southern District of New York,  
7 Eastern District of New York, the Southern District of  
8 Florida and District of New Jersey. The defendant is  
9 to surrender all travel documents and make no new  
10 applications.

11 The defendant is to be subject to Pretrial  
12 supervision as directed by Pretrial Services. The  
13 defendant is to seek or maintain employment and the  
14 defendant is to have no contact with co-defendants  
15 outside the presence of counsel, except with respect  
16 to Martin Handler with whom he may have non-  
17 substantive communications about the case outside the  
18 presence of counsel.

19 THE COURT: All right, and similarly to be  
20 released on his own signing of the bond and terms to  
21 be met by January 20<sup>th</sup>?

22 MR. WOLF: That is correct, Your Honor.

23 THE COURT: Okay, defense counsel, are those  
24 the terms and do you agree?

25 MR. SER: Yes, Your Honor, we agree.



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THE COURT: All right, and once again the terms seem appropriate to the Court and sufficient to reasonably assure the safety of the community and the presence of the defendant at future proceedings, so those will be imposed. And as I said, I am going to want to confirm with counsel just afterwards to make sure that all those have been recorded in my notes correctly.

I do want to remind the defendants that they are being released upon conditions as you heard and there can be very serious consequences if you violate any of those conditions or do not appear for the proceedings that you are required to appear for. What will happen is a warrant will issue for your arrest, you and anyone who has signed the bond, each of your respective bonds, will be liable for paying that amount and you may be found guilty of the additional crime of bail jumping which can have its own sentence and/or a fine.

In addition, if you commit a new criminal offense while you are out on release, then in addition to whatever sentence you may receive for that additional crime, you would also receive an extra term of sentence which would be up to ten years if the additional crime is a felony, or up to one year if it's a misdemeanor, and that additional term

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would be served after any other term of imprisonment is fulfilled.

Finally, I warn you not to have any contact with or engage in any intimidation of potential or designated witnesses or jurors, not to engage in any intimidation of any court officer, and not to engage in any conduct that would obstruct any investigation by law enforcement.

Mr. Martin Handler, do you understand that?

MR. MARTIN HANDLER: I do.

THE COURT: Mr. Lieberman, do you understand?

MR. LIEBERMAN: Yes, I do.

THE COURT: And Mr. Isidore Handler, do you understand?

MR. ISIDORE HANDLER: Yes, I do.

THE COURT: And Mr. Werczberger, do you understand?

MR. WERCZBERGER: Yes, I do.

THE COURT: All right, I trust that you all abide by the conditions that have been set.

Is there anything else we need to address, anything else from the government?

MR. WOLF: No, Your Honor, thank you.

THE COURT: Anything else from defense counsel, Mr. Martin Handler?

MR. STERN: We do have one application to make to Your Honor, as I understand at the time of my client's arrest this morning his cell phone was seized. We don't believe and the government can correct us if we're wrong, if there was a search warrant that was issued for that phone. And so we believe that seizure violates the Fourth Amendment under *Riley*. As we understand, you under *Riley* you can't, the phone is not included in a search instant to arrest, and at least as to my client I understand that what happened was that when he was arrested they asked him what he had on his person, he had a few items, and the government returned everything except his phone. So his keys, his credit cards, they were returned because they had use for it. I think it's sort of a blatant violation of what the Court held in *Riley*, you can't argue that it's a search instant to arrest and they're just vouchering what's on his person if they're returning the things they don't want and are just keeping the phone. So I imagine and, again, the government can correct me if I'm wrong, they're planning on obtaining in the near future a search warrant, but in the meantime we believe their continued retention of his phone violates the Fourth

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Amendment and pursuant to Federal Rule 41(g) we'd ask  
for -- we'd ask Your Honor to order its return.

THE COURT: All right, what's the government's  
position?

MR. WOLF: Yes, Your Honor, the law  
enforcement agents our position is had probable cause  
to seize the phone when they did and we are, plan to  
shortly obtain a search warrant to search its  
contents. To date we have not actually searched the  
contents of it, and any application I think would more  
appropriately be made in front of the District Judge.

THE COURT: All right, but no warrant has  
issued at this time, you said you believed there was  
probable cause and --

MR. WOLF: Yes, and I think under the law of  
the Second Circuit I think that there is a brief  
period of time that the government may seize the phone  
or safe keeping and then to obtain a search warrant  
authorizing access of the phone's contents. At this  
moment the government has not accessed the phone's  
contents.

THE COURT: All right, counsel?

MR. STERN: Your Honor, the government is  
saying they don't have judicial authority at this

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2 point, they haven't -- you know, they say they have  
3 probable cause, I'm not sure what their probable cause  
4 is, it's hard for me to respond without them sort of  
5 providing some details of what the probable cause is.  
6 But if they have it, this arrest as I understand it  
7 was planned, there is no particular reason they  
8 couldn't have applied for a search warrant. In fact,  
9 they did apply for a search warrant, as I understand  
10 it, on a couple of premises which were searched today.  
11 And so the government sort of chose not to seek a  
12 search warrant on the phone and just to seize it for  
13 reasons I don't entirely understand so, you know, we  
14 don't believe that's sufficient under the law and,  
15 again, we'd renew our request that Your Honor order  
16 its return.

17 THE COURT: All right, well, I'm going to  
18 order that it be returned within 24 hours if a warrant  
19 hasn't issued by that time, okay?

20 MR. STERN: Thank you, Your Honor?

21 MS. HARRIS: (off microphone) Your Honor, we  
22 have a similar application but the facts are a little  
23 different, my client, I understand, was being called  
24 simultaneously by the agents as they were knocking on  
25 the door because it was very early morning he was

1  
2 asleep and not responding. He was on the phone with  
3 the agent, they entered (inaudible) took the phone out  
4 of his hand. And then, additionally, (inaudible)  
5 would be returned to him and later (inaudible)  
6 obviously not be returned, but similarly (inaudible)  
7 by co-counsel, we believe that seizure, there's no  
8 grounds for that seizure, it's an unlawful seizure and  
9 we would request under Rule 41(g) for the return of  
10 the phone.

11 THE COURT: Well, again, to the extent that  
12 there's no warrant yet I'll allow the government 24  
13 hours to issue a warrant for it, but if no warrant  
14 issues then it should be returned.

15 MR. YUROWITZ: Your Honor, I would just join  
16 that application, a phone was seized from my client,  
17 as well, it's circumstances similar to Mr. Handler. He  
18 was outside of his house, they took the phone, they  
19 didn't take the other documents, so for the same  
20 reasons, I could repeat them but I would join in the  
21 application.

22 THE COURT: Yes --

23 MR. WOLF: Your Honor, we would respectfully I  
24 think request that, I think 24 hours is a much shorter  
25 time period I think than the case law requires. There

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2 are Second Circuit cases where periods of weeks have  
3 gone by that the Second Circuit has said it is  
4 appropriate. It's a sliding scale, it's a standard,  
5 but I think the general standard, and I'm working off  
6 of memory here, is that the government needs to work  
7 with reasonable dispatch upon obtaining, seeking a  
8 cell phone to actually obtain a search warrant to  
9 search its contents. And so I think under these  
10 circumstances I think 24 hours is, I don't think there  
11 is necessarily support for that here, the phones were  
12 obtained this morning. I think certainly a week would  
13 provide the government with ample time and I think  
14 would also comfortably fit within the standards that  
15 have been articulated by the second Circuit.

16 THE COURT: Yes, and also to the extent and,  
17 again, it may not be the case and it may be different  
18 for each of you, but to the extent the phone was in  
19 plain view and it would be expected that those phones  
20 had been used or would have been used in connection  
21 with the charges and would, therefore, be likely or  
22 probable or certainly reasonable suspicion but  
23 probable that they have communications related to the  
24 events in question, I would imagine that under those  
25 circumstances it would be appropriate for the agents

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to have seized them. Do you have a different view or  
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MR. WOLF: No, that's exactly right, Your Honor, and I can represent that based on the government's investigation that there was ample cause to believe that these particular phones, to the extent that they've been seized and we wish to search them, that those phones have been used to communicate about the subject offenses in furtherance of those offenses.

THE COURT: All right, if anybody wants to respond? Yes, counsel for Isidore Handler.

MS. HARRIS: (off microphone) Yes, Justine Harris, very briefly, Your Honor. If we could ask for the government maybe just by letter to defense counsel to share the citations. Because I'm aware of law that says the government has a reasonable time to execute a warrant once its obtained and (inaudible). I mean (inaudible) and I'm happy to be corrected that they have grounds to seize items and hold them for a period of time. So that's number one, I'd ask that those be shared.

And then secondly, Your Honor, (inaudible) application for a search warrant is going to be made obviously, as indicated by the government, at a later



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2 date. Given that they already have the devices we ask  
3 that the application be on notice to the defense. Your  
4 Honor, I've litigated (inaudible) seizure of phones in  
5 plain view and the law tends to say that it has to be  
6 contraband unless there is probable cause, that they  
7 can put that in warrant then they can seize those  
8 phones. So I think these are complex issues and given  
9 the chronology that they have the phones already, that  
10 the situation there, an application for a warrant can  
11 be done on notice and litigated in advance rather than  
12 after the fact. So I think a request (inaudible).

13 MR. WOLF: Your Honor, I think what the  
14 defendants are asking for is a preemptive right to  
15 challenge, to stop the government from engaging in a  
16 search. I'm not sure that that's the proper  
17 procedure, I think that there was, if memory serves I  
18 think in the news recently there was litigation about  
19 that very issue. And so I just don't think that there  
20 is any sort of standing here for defense counsel to  
21 ask for such notice. I think the proper remedy here is  
22 in the event that the government does obtain a search  
23 warrant, does collect from these devices evidence or  
24 materials, that they then move to suppress that  
25 evidence. I just don't think any of the matters that

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defense counsel are raising are particularly ripe at the moment.

THE COURT: Yes --

MR. STERN: Your Honor, can I --

THE COURT: Hold on, one at a time.

MR. STERN: And, again, I'd join Ms. Harris' application that we, the government provides the cases because I think most of those cases, as I recollect, are dealing with suppression issues. And as Your Honor knows, there's sort of always two issues in Fourth Amendment application, was it a violation of the Fourth Amendment and do we suppress it. And so I believe it's true that there's a little leeway where maybe something was improper but it's not, it doesn't rise to the level or where it gets suppressed. But on a 41(g) application like we are here, it's just a straight question of whether the government's retention, continued retention violates the Fourth Amendment, there is no sort of second step. And in essence, what the government is sort of asking Your Honor to allow is we'll just, you know, we can sort of ignore the fact that there might be a current Fourth Amendment violation and just make it a question of suppression. And so what's why we ask Your Honor to

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sort of stick to the original date but that's  
certainly discretionary at this point.

THE COURT: Thank you. Okay, Mr. Werczberger.

MR. SER: On behalf of Mr. Werczberger, Your  
Honor, I join in everything my colleagues have said on  
behalf of the co-defendants and make the motion  
pursuant to 41(g) for the return of my client's phone,  
Mr. Werczberger's phone, which was seized from a  
pocket, not necessarily plain view, but nonetheless  
was seized at the time of his arrest in the absence of  
a warrant.

I wanted to address just a couple of the  
points, this has been characterized as preemptive but  
it's not, there's a seizure that's occurred, we're  
simply requesting the requisite probable cause showing  
to justify the continued retention of property. So say  
ipse dixit that it must have been used because people  
use phones and must have used it in the course of the  
criminal activity, simply isn't sufficient on its  
face. I think the government has to be much more  
specific and particular and identify facts that  
demonstrate probable cause for each of the phones that  
were seized as having been used in the alleged  
offense. Otherwise this is a cart before the horse

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2 scenario where the government can come in and seize  
3 anything, hold onto it and simply say it was used  
4 without making the showing, that simply inconsistent  
5 with Rule 41 in terms of a search warrant. So they  
6 have to demonstrate probable cause to believe this is  
7 contraband or something that was used during the  
8 course or in aid of a commission of a crime and they  
9 simply haven't done it on this record here. So I would  
10 ask for a return of that property and, for what it's  
11 worth, to my understanding that the agents informed  
12 Mr. Werczberger that they planned to give it back to  
13 him after his appearance. So that may speak to at  
14 least the mindset of the agents with regard to the  
15 nature of the phone and what it may or may not show.

16 THE COURT: All right, here's what we're going  
17 to do. I think given the colloquy that we've had since  
18 my initial reaction, that there's enough dispute here  
19 and issues that deserve further airing. So I would ask  
20 defense counsel if this is something you want to  
21 pursue, then I ask you to make a written application  
22 and I suspect that District Judge Reardon will want to  
23 resolve that. So if you're going to make an  
24 application I'd ask you to do so as, you know, as soon  
25 as you can, and whatever you see as expeditious if you

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are going to do it.

MS. HARRIS: (off microphone) It the doesn't sound like the government (inaudible) within 24 hours anyway, but obviously we would like, our argument is not moot by the application of a warrant. So whether we (inaudible) within 48 hours we understand that there will be no warrant signed.

THE COURT: Well I'm not going to, I'm not going to prevent the government from issuing a warrant. If it becomes time that you say well that warrant wasn't valid because the phones were being withheld during that time, then, you know, that's for you to argue, as he indicated in the suppression motion you're not waiving that right, okay? All right, so we know how we're proceeding then? Okay, and obviously it may be in the government's interest to act sooner rather than later but I'm not going to set an artificial deadline on it, I'll let it play out as it should going forward.

All right, anything else? Anything else from any of the defendants?

MR. STERN: No, Your Honor.

MS. HARRIS: Nothing further, Judge.

MR. SER: Not for Mr. Werczberger, Your Honor,

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no.

THE COURT: All right, anything else from the government?

MR. WOLF: No, Your Honor, thank you.

THE COURT: All right, we are adjourned. Thank you.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, United States of America versus Martin Handler, et al., Docket #23cr0004, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: January 17, 2023